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UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF WASHINGTON

JAMES S. GORDON, JR., Plaintiff, vs. IMPULSE MARKETING GROUP, INC., Defendant ______________________ IMPULSE MARKETING GROUP, INC., Third-Party Plaintiff, vs. BONNIE GORDON, et al., Third-Party Defendants.	No. CV-04-5125-FVS JOINT STATUS CERTIFICATE AND RULE 26(f) DISCOVERY PLAN FOR PLAINTIFF AND DEFENDANT WITHOUT EXECUTION BY THIRD PARTY DEFENDANTS

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Pursuant to the request of the court, the parties to this action have conferred regarding all issues raised in the Notice Setting Status Conference. Each party's attorneys have participated in this discussion in good faith, and have made all reasonable efforts to reach agreement regarding the issues set forth below. On those points where no agreement was possible, each party's separate position has been set forth. Thus, the joint certificate is as follows:

(a) Service of process on parties not yet served:

The parties currently named in this suit have been served with the exception of Jamila Gordon. The Third Party Defendants have not answered.

(b) Jurisdiction and Venue:

The parties to this action acknowledge that personal jurisdiction is proper in this district, and that venue is not contested.

(c) Anticipated motions:

Each of the parties anticipate motions for summary judgment on various issues in this case. Plaintiff's Motion to Dismiss and in the Alternative for Summary Judgment re: Counterclaims and Third Party Defendants was scheduled for hearing November 2, 2005 and has been stricken.

(d) Rule 26(f) Conference - Proposed Discovery Plan and Rule 26(a)(1) Disclosures by Plaintiff and by Defendant per Notice Setting Telephonic Scheduling Conference paragraph 2:

Discovery Plan

The parties acknowledge the Application of Rule 26(f) of the Federal Rules of Civil Procedure and have met and discussed the nature and basis of the claims and defenses and the possibility of settlement. The parties are ready to begin the process of arranging depositions and to make their documents available to each other for inspection and copying on or prior to October 28, 2005.

1. No changes should be made in the timing, form, or requirement for disclosures under subdivision 26(a)(1) or local rule. Disclosures

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under subdivision (a)(1) will be made as identified above, October 28, 2005. Defendant is limited in the ability to identify all witnesses until receipt of the alleged email at which time Defendant will supplement its 26(a)(1) disclosure. Defendant is in possession of the following categories of documents that they may use to support its defenses in this matter: (1) third-party marketer-related documents that may be related to the allegations contained in Plaintiff's Complaint; (2) contracts between Plaintiff and Defendant and/or Defendant's third-party marketers; and (3) opt-in information-related documents. These documents are sited within Defendant's corporate offices. Defendant is limited in its disclosure of discoverable information to support its defenses because Plaintiff has failed to disclose any of the alleged violating emails and the Court did not order Plaintiff to plead his Complaint with particularity.

2. The parties agree that Discovery may be needed on all subjects contemplated under the claims and defenses pled in this action relative to Plaintiff, Defendant, Third Party Plaintiff and Third Party Defendants . The Plaintiff and Defendant are not in agreement regarding a plan for Discovery relative to the Defendant's Counterclaims and the Defendant's Third Party Claims. The Defendant seeks completion of all Discovery prior to filing of any dispositive motions. The Plaintiff seeks early Discovery relative to the Defendant's defenses to Plaintiff's Motion to Dismiss and in the Alternative Motion for Summary Judgment. Defendant contends that Discovery should not be conducted in phases nor limited to or focused on particular issues. Plaintiff contends that Discovery should be conducted in a first phase focused on Defendant's defenses to

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Plaintiff's Pending motion to wit the email allegedly held by Plaintiff have not been provided to Defendant.

3. No changes should be made in the limitations on discovery imposed under the Federal Rules of Civil Procedure or by local rules.

4. No other orders should be entered by the court under FRCP 16(c) or under Rule 16(b) at this time. Parties may seek orders in the future based upon future discovery requests.

5. A protective order may be required and, if so, will be stipulated and submitted or noted prior to November 8, 2005.

Plaintiff's Rule 26(a)(1) Disclosures

Pursuant to Fed. R. Civ. P. 26(a)(1), Plaintiff James S. Gordon, Jr. makes the following initial disclosures.

A. Fed. R. Civ. P. 26 (a)(1) (A) the name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Plaintiffs believe that the following individuals are likely to have discoverable information relevant to disputed facts alleged in the pleadings, on the subjects described below.

1. Mr. James S. Gordon, Jr. who may be contacted through the Law Office of Douglas E. McKinley, Jr.

Mr. Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the receipt of emails from the Defendant or agents acting at the behest of the Defendant by Mr. Gordon, information related to the subject lines, return addresses, and transmission paths of the emails that are the subject of the Plaintiff's complaint, information

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related to the Defendant's contention that the Plaintiff "opted in" to receiving the emails that are the subject of the Plaintiff's complaint, and information related to the operation of "gordonworks.com" as it relates to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

2. Mrs. Bonnie Gordon

Mrs. Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

3. Mr. James. S. Gordon III

Mr. Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

4. Mr. Jonathan Gordon

Mr Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

5. Ms. Jamila Gordon

Ms. Gordon may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

6. Mr. Robert Pritchett

Mr. Pritchett may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the

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Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

7. Ms. Emily Abbey

Ms. Abbey may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

8. Mr. Anthony Potts, who may be contacted through the Law Office of Douglas E. McKinley, Jr.

Mr. Potts may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

9. Mr. Cal Robinson, who may be contacted through the Law Office of Douglas E. McKinley, Jr.

Mr. Robinson may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

10. Mr. Bertrand Griffin II, who may be contacted through the Law Office of Douglas E. McKinley, Jr.

Mr. Griffin may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the Plaintiff's contention that "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7).

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11. Mr. Lew Reed

871 George Washington Way

Richland WA, 99352

509-942-7608

Mr. Reed may have discoverable information regarding the facts pertinent to this lawsuit, including, but not limited to information related to the subject lines, return addresses, and transmission paths of the emails that are the subject of the Plaintiff's complaint.

B. Fed. R. Civ. P. 26 (a)(1) (B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment;

Simultaneous with the filing of this Proposed Discovery Plan, the Plaintiff's have provided compact discs containing all of the emails that are the subject of, and relevant to, this complaint to the counsel for the Defendant. To the extent further emails are sent to the Plaintiff by the Defendant, or by others acting on behalf or at the behest of the Defendant, the Plaintiff assumes that counsel for the Defendant will have access to those directly from the Defendant. Data compilations demonstrating "gordonworks.com" is an interactive computer service as that term is defined in RCW 19.190.010 (7) are available on the internet at "gordonworks.com." Data compilations demonstrating "gordonworks.com" is used as an email service, further demonstrating "gordonworks.com" an interactive computer service as that term is defined in RCW 19.190.010 (7) are in the possession of the individuals listed above.

C. Fed. R. Civ. P. 26 (a)(1) (C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries

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suffered;

The computation of damages, including the amounts and the statutory basis for those damages, are set forth in the Plaintiff's Complaint.

D. Fed. R. Civ. P. 26 (a)(1) (D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

No insurance agreements are applicable.

Rule 26(a)(1) provides that Initial Disclosures must be made "based on the information then reasonably available." Plaintiff reserves the right to supplement these initial disclosures as relevant information and documents are discovered. Plaintiff does not, however, thereby undertake any obligation to supplement beyond that imposed by the Federal Rules of Civil Procedure.

Defendant's Rule 26(a)(1) Disclosures

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, Defendant, Impulse Marketing Group, Inc. (the "Defendant") by its undersigned counsel, hereby makes the following disclosures based upon current information and knowledge:

A. The name and, if known, the address and telephone number of each individual likely to have discoverable information that the disclosing party may use to support its claims or defenses, unless solely for impeachment, identifying the subjects of the information.

Response: 1. Phil Huston
1583 Deer Meadow Dr.
Henderson, NV 89012
702-614-7474 (H)

Phil Huston may/will offer testimony concerning the email marketing business practices, if any, of Defendant.

2. Jon Goldstein
Impulse Marketing Group, Inc.

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5887 Glenridge Drive, Suite 400
Atlanta, GA 30328
678-805-2100

Jon Goldstein may/will offer testimony concerning the email marketing business practices, if any, of Defendant.

3. Defendant's third-party marketing partners may/will offer testimony as to Defendant's affirmative defenses.

4. Defendant is limited in its disclosure of discoverable information to support its defenses because Plaintiff has failed to disclose any of the alleged violating emails and the Court did not order Plaintiff to plead his Complaint with particularity.

B. A copy of, or description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and that the disclosing party may use to support its claims or defenses, unless solely for impeachment.

Response: Defendant is in possession of the following categories of documents that it may use to support its defenses in this matter: (1) third-party marketer-related documents that may be related to the allegations contained in Plaintiff's Complaint; (2) contracts between Plaintiff and Defendant and/or Defendant's third-party marketers; and (3) opt-in information-related documents. These documents are sited within Defendant's corporate offices. Defendant is limited in its disclosure of discoverable information to support its defenses because Plaintiff has failed to disclose any of the alleged violating emails and the Court did not order Plaintiff to plead his Complaint with particularity.

C. A computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered.

Response: Defendant is in possession of the following categories of documents that it may use to compute Defendant's damages arising out of the allegations contained in its Amended Counterclaims and Third-Party Amended Complaint: (1) third-party marketer-related documents; (2) contracts between Plaintiff and Defendant and/or

Defendant's third-party marketers; and (3) opt-in information-related documents. These documents are sited within Defendant's corporate offices. Defendant is limited in its disclosure of discoverable information to support its damages related to Defendants Amended Counterclaims and Third-Party Amended Complaint because Plaintiff has failed to disclose any of the alleged violating emails and the Court did not order Plaintiff to plead his Complaint with particularity.

D. For inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

Response: Not applicable.

(e) Recommended Dates:

1. **Discovery Cutoff:** The parties do not agree regarding the scheduling of Discovery. Defendant requests that all discovery be concluded prior to scheduling of dispositive motions and seeks, due to the Third Party Defendant claims, a Discovery Cutoff of April 28, 2006. Plaintiff requests that Defendant conduct early discovery re: defenses to the dismissal of Defendant's Counterclaims and Defendant's Third Party Claims so that Plaintiff's Motion may be renoted for hearing prior to Discovery Cutoff for Discovery of the primary issues between Plaintiff and Defendant. The Defendant Impulse Marketing Group Inc. proposes that Plaintiff's Motion to Dismiss or in the Alternative for Summary Judgment be re-noted for hearing 7 days following Discovery Cutoff. The Third Party Plaintiff notes that none of the Third Party Defendants have answered. Plaintiff contends that most of the facts necessary to establish Defendant's liability are already in Plaintiff's possession, as they are contained within the emails sent to Plaintiff by Defendant. Accordingly, Plaintiff wishes to file a motion for summary judgment, or for partial summary judgment, after each party has responded to the other party's initial discovery requests. Plaintiff anticipates that such a motion would be ripe for consideration by February 1, 2006.

2. **Pretrial Conference:** The date of pretrial conference should be set as the Court determines based upon the trial date.

3. **Length of Trial:** The parties anticipate eight (8) days for this case.

4. **Trial Date:** The parties request a trial date of approximately 120 days following the discovery cutoff, which would be approximately July 28, 2006.

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5. **Other deadlines:** The parties have reviewed the other deadlines set forth in the Notice Setting Status Conference. No request for deviation is made at this time.

(f) Appropriateness of special proceedings:

The parties agree that at this time no special procedures would be appropriate for this action.

(g) Modification of standard pretrial procedure:

The parties have conferred and agree at this time that all pleadings and motions may be served upon counsel for the parties by the court's ECF and by mailing by regular mail to pro se parties.

(h) Feasibility of Bifurcation/Structure of Sequence of Trial:

The parties do not seek special structuring of the trial. The parties do not believe bifurcation is advisable in this case.

(i) Magistrate Judge:

The parties to this case do not consent to trial of this action by a full-time United States Magistrate Judge.

(j) Prospects for Settlement:

The parties have not engaged in active settlement negotiations. The parties believe that the settlement and mediation prospects for this case will significantly improve after at least some initial discovery is conducted.

(k) Statement Identifying Corporate Information: Defendant Impulse Marketing Group, Inc., a Nevada corporation, hereby discloses that it is a privately held corporation that does not have a parent corporation.

(l) Exexution by Third Party Defendants: Drafts of this Joint Status Certificate have been communicated to Third Party Defendants without response.

(m) Other Matters Conducive to the Efficient Adjudication of the Action:

Other than the issues stated above, the parties do not at this time suggest any other matters conducive to the just, efficient, or economical adjudication of the action or proceeding.

DATED this 28th day of October , 2005.

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/S/DOUGLAS E. MCKINLEY, JR.

Douglas E. McKinley, Jr. WSBA #20806
Attorney for Plaintiff James S. Gordon

_/S/FLOYD E. IVEY_________

Floyd E. Ivey, WSBA #6888
Attorneys for the Defendant Impulse

____
Bonnie F. Gordon, Third Party Defendant

____
James S. Gordon, III, Third Party Defendant

____
Jonathan K. Gordon, Third Party Defendant

____
Robert Pritchett, Third Party Defendant

____
Emily H. Abbey, Third Party Defendant

____
Jamila Gordon, Third Party Defendant

/S/FLOYD E. IVEY FOR SEAN MOYNIHAN AND PETER GLANTZ__________________
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I am counsel for Defendant and Third-Party Plaintiff Impulse Marketing Group, Inc. On the 28th day of October, 2005, I electronically filed JOINT STATUS CERTIFICATE AND RULE 26(f) DISCOVERY PLAN with the Clerk of the Court using the CM/ECF System which will send notification of such filing to Douglas E. McKinley, Jr., Peter J. Glantz and Sean A. Moynihan. I hereby certify that I have served the foregoing to the following non-CM/ECF participants by other means: Bonnie Gordon, Jonathan Gordon, James S. Gordon, III, Emily Abbey and Robert Prichett. I hereby certify that I have not served the foregoing to the following persons who are non-CM/ECF participants named in this lawsuit, but who have not yet been served or entered an appearance in this lawsuit by other means: Jamila Gordon.

I certify and declare, under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct.

DATED: October 28, 2005.

S/ FLOYD E. IVEY

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